

ARBITRATION AWARD

In the Matter of the Arbitration	(Grievant: Class Action
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between	(
)	
	(
)	
	(Case: Pilot Differential
)	
and	(
)	
	(
)	
	(

BEFORE: Ed Escamilla, Arbitrator

APPEARANCES:

For xxx:

For xxx:

Place of Hearing:	Keiser, OR
Date of Hearing:	May 18, 2001
Relevant Contract Provision:	CBA Art 25.7.1
Contract Year:	1999-2001
Type Grievance:	Contract

Award Summary

The grievance is sustained. Backpay is awarded to the five pilots named in the grievance in the amount for the difference between 15% and 20% pay differential, plus interest, beginning July 1, 2000. xxx failed to apply Article 25.7.1 correctly because of its prospective interpretation of said Article.

Ed Escamilla	June 22, 2001
Arbitrator	

OPINION AND AWARD

Background

The instant matter was heard on May 18, 2001 in Keiser, Oregon. All parties appeared and fully participated at the hearing, presenting evidence and arguments in support of their respective positions. Both parties requested to submit post-hearing briefs, which were due postmarked by June 8.

Issue

Did the xxx violate Article 25.7.1 of the collective bargaining agreement in the manner in which it implemented the pilot pay differential provision?

Statement of Facts

Association's position

The Association asserts that the instant dispute is over the pay differential of approximately 7 pilots employed by xP. The pilots are stationed throughout the state performing various duties including traffic, assisting fish and wildlife department and shuttling the governor in the performance of his duties. Historically the pilots were paid \$5 pay differential. In the negotiations for the current contract the pilots urged the Association to change the past pay differential in line with other states' pay differential for pilots. During contract negotiations, a two-tier structure pay system was designed to pay pilots for specific time and winter seasons employed as pilots. The parties did not reach an agreement on this issue and submitted this matter to mediation among other unresolved contract items. The matter was not resolve in mediation and thereafter the

case went to interest arbitration, in accordance with State of Xxx procedures. The interest Arbitrator adopted the Association's proposal, including Article 25.7.1, which was later incorporated into the contract. It is the xxx interpretation of this contract provision that raises the instant dispute.

XXX's position

XXX argues that the history of this provision between the parties is instructive on the resolution of the grievance. It argues that standard rules of construction of contract must be applied in arriving at the conclusions herein. XXX views this case as one that involves the issue of when pilots should receive the 20% pay differential as all of the pilots immediately receive the 15% pay differential when the contract was approved. XXX argues that the contract negotiations revealed that the Association proposed a two-tier pay differential system based on employees' status of journeyman and master. Subsequently, the Association dropped the two classifications. The journeyman would have received 15% pay differential while masters would receive 20% pay differential. After numerous other modifications to the pay differential proposal, the Association added the effective date of the proposal of July 1, 2000. XXX argues that the contract is ambiguous, at best, so therefore extrinsic evidence must be considered in arriving at the intent of the parties. The rules of contract interpretation require that the contract drafters be held accountable for any ambiguity and that words must be given their common meaning. XXX believes that Article 25.7.1 requires pilots to meet the additional criteria of flying for 3 winter seasons and 1000 hours before they are eligible for the 20% pay differential. These flying requirements are to be earned or accumulated beginning July 1, 2000.

Witnesses' Testimonies

The Association presented several witnesses to testify in its behalf. The Association's attorney testified regarding his involvement in negotiations for the current

contract, specifically regarding the provision in question. The contract has a two-year duration designed to coincide with legislature terms.

He testified concerning Article 12, the grievance procedure, as the Association believes there was an issue concerning XXX's failure to meet within the prescribed deadline. Subsequently after the hearing close, the Association moved to withdraw its arguments pertaining to waiver/default judgment under Article 12. Accordingly, further discussion of Article 12 is unwarranted.

The Association's attorney explained that at mediation, he proposed the 10/20% differential pay for journeyman and master pilots, respectively. He believed that the journeyman level related to the level of experience, which was consistent with XXX's rules. The offer was later changed to 15/20% differential pay during mediation. The Association's final offer contained this latter percentage. Furthermore, the Association's final offer did not identify the classifications of journeyman and master pilots and made the pay differential increase effective July 1, 2000 rather than January 1, the beginning date of the contract. The attorney explained that the pay differential increase effective date of July 1 was offered by the Association in order to accommodate any budgetary concerns XXX might have. He explained that the final offer did not include the two job classifications because they were unnecessary based on the final offer's description of who would receive 15% or 20 % pay differential. ("Final offer" submitted to mediator; "last best offer" submitted to interest Arbitrator.)

Several pilots testified in behalf of the Association. Their testimony revealed that there are currently approximately six pilots and 1 chief pilot who coordinates and oversees the other pilots. All of the pilots have been employed as pilots for more than three years and some of the pilots have more than five years pilot experience. The pilots testified that after the contract was approved, they immediately receive the 15% differential. No one received the 20% pay differential. The chief pilot testified that their flight manual speaks about experience in the same terms and language incorporated in the current contract, Article 25.7.1.

The Association president also testified. He stated that it is the Association's position that 5 pilots should have received the 20% pay differential and the two other pilots the 15% pay differential. He also confirmed the Association's attorney's testimony that the "July 1, 2000 effective date" was included in the Association's proposal in order to accommodate statutory limitations and XXX economic situations.

XXX presented the deputy administrator for labor relations of xxx, which represents XXX in certain labor relations matters. She testified that the pilots had received a \$5 per hour pay differential in previous contracts. The Association raised the two-tier system for the first time during mediation. XXX rejected the Association's proposal. At a subsequent meeting in August, the Association explained to XXX classifications of master and journeyman. She believed that journeyman employees would be all those employees who were flying any aircraft except for the King Air, which was reserved, to the master pilots. The parties continued to negotiate this language without consensus.

Without reaching an agreement, this issue among others, were submitted for interest arbitration. The interest Arbitrator adopted the Association's proposal. She interpreted the Association's proposal by immediately applying 15% pay differential to all pilots and subsequently, after July 1, 2000 if a pilot accumulated 1000 flying hours and had flown three winters, the pilots would then received 20% pay differential.

Documentary Evidence

The parties submitted numerous documents relevant to the issue of pay differential for pilots. It is important to note that the interest Arbitrator concluded that,

"The department proposes to double the existing differential, from \$5 to \$10 per hour for actual flying time. The Association proposes 15 percent

of base pay for the first three years in the assignment and 20 percent thereafter."

There is nothing in the interest Arbitrator's comments, which reflect that the Association's proposal is prospective with respect to the experience of the pilots. The proposal as viewed by the interest Arbitrator, merely reflects that 15% base pay increase would be for the first three years in the assignment and 20% thereafter. It does not elaborate that the 20% pay differential is conditioned on pilots accruing the stated flying hours and flying winter seasons after ratification of the contract or after the effective date of this proposal. Furthermore, there was no evidence introduced at the hearing to suggest that the Association asserted to the interest Arbitrator that their proposal was prospective.

Also of importance is the Association's exhibit 8/XXX's exhibit 8. In this document, the Association breaks down their proposal into a cost assessment basis. It is noted that under Article 25.7, the first entry, the Association applies the 20% pay differential to 5 pilots. Although this cost assessment is not described in detail, comparing the cost assessment contained therein with provisions of Article 25.7, it is clear that the first entry refers to pay differential to pilots, the second entry refers to bomb specialist, third entry refers to bilingual abilities, and the fourth entry refers to recertification. Thus, the documents exchanged by the parties, specifically the Association's cost assessment, reflects that the Association intended its proposal to apply the 20% pay differential to 5 pilots, which presumably are the 5 pilots that are named in the grievance.

XXX's exhibit 5 reveals an oral exchange between the parties' negotiators during negotiations concerning the Association's pay differential proposal. When questioned about the difference between a "10 percent base for journeyman and 20 percent for master ", the Association explained that the pilots themselves presented the information. The Association explained after flying for three winters and 1000 hours, the pilots would be elevated to the "master pilot" level entitled to the higher pay differential.

Analysis and Conclusions

I have carefully reviewed the testimony and documentary evidence presented at the hearing, as well as the parties' arguments and briefs. After careful consideration of the same, I reached the following findings of facts and conclusions.

In a contract interpretation case, such as this, the burden of proof falls on the party who asserts a violation of a contract. Accordingly, the Association has the burden of proof of establishing that the contract was violated as alleged in the grievance and that the burden must be supported by the preponderance of the evidence. In these types of cases, an Arbitrator may not modify the existing language in the contract. As pointed out in the briefs, in contract interpretation cases, the common, well-accepted meaning of words in the contract clause in question, must be applied. If the clause is clear and unambiguous, then it must be applied as written. If however, parties differ in the interpretation of the clause, the parties are free to introduce extrinsic evidence of their intent and meaning in support of their respective interpretation of the clause. However, these general principles of contract interpretation are to a certain extent modified by the facts particular to this case.

Specifically, the history of the bargaining for this latest contract provides for the basis for the departure from the normal analysis of contract interpretation case. The parties' intent and meaning of the clause is an important and relevant factor in deciding this type of issue. This case however is not readily receptive to that analysis because of the intervention of the interest Arbitrator. The interest Arbitrator adopted the language proposed by the Association. Thus the intent and meaning by one of the parties, XXX, regarding the adopted proposal is not relevant in this particular issue, as XXX did not negotiate the clause in questioned. XXX cannot claim that it intended Article 25.7.1 to mean or be interpreted in a certain way, because XXX did not author the Article.

Therefore, only the Association's intent and meaning of the proposal remains relevant in deciding this case.

The interest Arbitrator specifically adopted verbatim the Association's language. The interest Arbitrator commented about his uneasiness of providing such a large increase. Nevertheless, the interest Arbitrator was bound to adopt the entire "package" of the party based on whose proposal would best serve the public. XXX argued that the only party/person, whose intent or meaning regarding Article 25.7.1 should be considered, is the interest Arbitrator. I disagree. The interest Arbitrator did not draft Article 25.7.1. In fact, he distances himself from the clause by making comments concerning his uneasiness regarding the clause. Nevertheless, even with that comment, the interest Arbitrator adopted Association's language. Therefore, the party whose extrinsic evidence is relevant regarding the intent and meaning of the clause is the Association.

Article 25.7.1 states.

"Effective July 1, 2000, employees assigned as pilots in an aircraft shall receive a monthly premium of equal to fifteen percent (15%) of their base pay for the first three winters or 1000 hours (whichever is later), as such assignment and a monthly premium equal to twenty percent (20%) of their base pay thereafter."

XXX maintains that it was not aware that the clause would be applied as the Association currently asserts. I find that the documentary evidence, specifically the cost analysis drafted by the Association and provided to XXX, clearly reflects that the Association's intent and meaning of the clause would provide for 20% pay differential for 5 pilots. The Association's cost analysis never entertained the possibility that all pilots would receive 15% pay differential as interpreted by XXX. There is no dispute that these documents were exchanged. There is no dispute that the Association's intent was clear and the Association provided a written confirmation of its intent through its cost analysis submitted to XXX.

Therefore, I find there is ample evidence to substantiate the Association's claim that it intended for Article 25.7.1 to be applied to the current pilots' experience and qualifications and if they already met the qualifications to receive the 20% pay differential, the pilots would immediately, upon approval of the contract, receive the 20% pay differential.

XXX also argues that the preliminary phrase of Article 25.7.1 not only creates the ambiguity which gave rise to this grievance but also supports its position that in order for all pilots to receive the 20% pay differential, the pilots must meet certain qualifications regarding flying hours and winter flying. These qualifications must be achieved after July 1 2000 before the 20% pay increase is applied. The Association witness, without contradiction, explained why the phrase, "effective July 1, 2000", was inserted into the pay differential clause. He explained that in order to have this proposal more acceptable to the interest Arbitrator and within the guidelines of the financial restrictions imposed by the State of Xxx, the effective date phrase was inserted. In other words, absent that clause, the contract by its terms and conditions would apply to all employees as of January 1 2000. The Association intended to assist itself as well as comply with any statutory budget restrictions by not making the pay differential clause retroactive to the beginning of the contract. This explanation was not rebutted.

XXX maintains fact the meaning of the clause is clear. All pilots will receive an immediate 15% pay differential increase and will receive 20% pay differential increase after flying three winters and accumulating 1000 flying hours. However, this interpretation is rebuked by the bargaining proposals submitted by the Association. The final offer made by the Association to the mediator was abundantly clear and there is no dispute concerning the meaning of that proposal.

"Employees assigned as pilots in an aircraft shall receive a premium of equal to fifteen percent (15%) of their base pay for the first three winters or 1000 hours (whichever is later), as such assignment and a premium equal to twenty percent (20%) of their base pay thereafter."

The proposal is identical to the last best offer proposal submitted to the interest Arbitrator, with the exception of the effective date phrase. Under all of the circumstances, there is an absence of reasonable basis to conclude that the Association's last best offer provided for such a drastic departure from its bargaining proposals history of Article 25.7.1 by intending for Article 25.7.1 to be applied prospectively and ignore the tenure and flying experience of the current pilots.

I conclude that the Association's interpretation of Article 25.7.1 that it drafted, including the strategically insertion of the effective date phrase, is supported by the preponderance of the evidence and is adopted herein. The Association met its burden of proof that the contract was violated as alleged in the grievance.

Award

The grievance is sustained. XXX violated Article 25.7.1 by failing to pay the five named employees the 20% pay differential, plus interest, effective July 1, 2000 as XXX incorrectly interpreted the clause to require employees to fly after July 1, 2000, an additional three winters and accumulate 1000 flying hours in order to receive the 20% pay differential. The parties shall be equally responsible for arbitration fees and costs. Arbitrator's fees and costs are attached.